



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

INTERNATIONAL ASSOCIATION OF FIRE- :
FIGHTERS, LOCAL 789 :

Complainant :

v. :

CITY OF NASHUA, NEW HAMPSHIRE :

Respondent :

CASE NO. F-0105:16

DECISION NO. 86-50

APPEARANCES

Representing the Complainant, Local 789 IAFF:

Robert K. Mekeel, Esq., Counsel

Representing the Respondent, City of Nashua:

Robert P. Leslie, Esq., Counsel

Representing Richard Mason:

Patrick T. Hayes, Esq., Counsel

Also appearing:

Steven A. Bolton, Esq., Corporation Counsel
Richard Navaroli, Chief of Police
Richard Mason, Deputy Chief of Training
Brian J. Goodman, President, Local 789, IAFF
Michael J. Howard, Secretary/Treasurer, Local 789, IAFF
Marilyn Greenwood, Personnel Director
Maurice L. Arel, Former Mayor, City of Nashua
Richard D. Chasse, Fire Commissioner

BACKGROUND

Local 789, International Association of Fire Fighrers (Union) of Nashua, N. H. complained of improper practices on the part of the City of Nashua (City) in charges filed with PELRB on May 5, 1986. In their complaint, the Union charged that the City failed to abide by an arbitrator's decision relative to the posting of a position of "Superintendent of Training", contrary to the fact that their collective bargaining agreement (grievance procedure) contains a provision for final and binding arbitration of grievances (Article 19, Section A, Step V). The Union claims, therefore, that the City has violated RSA 273-A:5, I(h).

The City, in its answer, denies any breach of RSA 273-A and further claims that the arbitrator exceeded his powers in making the award and also made "plain mistakes of fact and law". It agreed that it had created a new position of "Deputy Chief-Training" (outside of the bargaining unit) and filled the position by promoting Officer Marquis, who was formerly the "Superintendent of Training" (within the bargaining unit). The City did not refill the Superintendent position. The Union grieved the method by which Marquis was promoted. On January 19, 1984, the parties settled the grievance by entering a "side bar". A special agreement, recognizing the new position and requiring that Officer Marquis pass a test in order to remain in the position. Marquis passed the test.

On April 21, 1984, the parties entered their current agreement, which was made retroactive to July 1, 1983 and to continue in effect through June 30, 1986. The new agreement recognized the position of "Deputy Chief-Training" as outside the bargaining unit (Article 2) and provided methods for filling vacancies. Marquis retired from City employment in July of 1985 at which time the City filled the position in accord with certain provisions of their contract with the Union. The Union grieved the filling of the position arguing that their "side bar" agreement called for the abolition of the position when Marquis left it. This grievance went to arbitration and the arbitrator found for the Union, basing his award upon a finding that "The position of Deputy Chief of Training is not a position intended to exist outside the jurisdiction of the collective bargaining unit."

The City argued that the arbitrator exceeded his authority "by usurping the authority of the PELRB", which has exclusive jurisdiction under RSA 273-A:8 to determine which positions are to be in/out of a bargaining unit. It further argues that the arbitrator interferes with the City's managerial rights under RSA 273-A:1, XI when he ordered the City to eliminate the position of "Deputy Chief-Training" and fill the position of Superintendent of Training.

A hearing was held on July 10, 1986 at the PELRB office in Concord, NH with all parties represented.

FINDINGS OF FACT AND RULINGS OF LAW

Note: Early in the hearing, the PELRB decided to hear argument only on the question of the Arbitrator's having exceeded his authority and/or made simple mistakes. PELRB declined to rehear the case presented to the Arbitrator and released certain witnesses who were prepared to testify about the special or "side bar" agreement. (This decision was taken after hearing arguments on this point). PELRB agrees with the City that under certain circumstances, PELRB has jurisdiction to review an arbitrator's decision, (see Board of Trustees of the University System of New Hampshire v. Keene State College Education Association, NH 493 A.2d 1125, 339) within the context of RSA 273-A.

1. The City's first argument is that the Arbitrator exceeded his authority by ordering them to refill a position in the bargaining unit and telling them the Deputy Chief-Training position was not "intended to exist outside" the bargaining unit. The City is

correct in its position that it is the PELRB which has the authority to determine if positions shall be in bargaining units or not. However, the arbitrator was simply interpreting his understanding of what the parties had agreed to in their January 19, 1984 "side bar" agreement. The City and the Union are free to agree on such things as whether or not a Superintendent in a Deputy Chief position is appropriate for training. The City has not lost its managerial prerogative but it may agree to curtail it.

2. The City's second argument is that the Arbitrator made simple mistakes by (a) interpreting the January 19, 1984 "side bar" agreement as superseding the contract agreed to later (April, 1984) and (b) in interpreting the side bar agreement to mean that the City had agreed to abolish the position of Deputy Chief when Marquis no longer occupied it. Even though the new contract agreed to in April of 1984 contained language recognizing the Deputy Chief position, the Arbitrator was within his authority to hold that the January, 1984 agreement bound the City to curtail its rights to fill the position until the date in the agreement, June 30, 1986.

The January 19, 1984 agreement states:

"If Officer Marquis flunks the test, he will return to the position of Superintendent of Training, and for the period ending June 30, 1986, the position of the Deputy Chief-Training will be abolished and no further tests for that position will be given unless Officer Marquis terminates his employment with the Department".

The statement on its face contains a degree of ambiguity which PELRB could not make clear without a full hearing on this matter alone. This we decline to do. We believe that the arbitrator's function is to determine the meaning of such agreements by hearing from both sides in the matter and he was properly exercising his authority in doing so. We decline to second-guess his opinion in this matter. We find the City failed to raise the question of the arbitrator's authority before the Arbitrator. We cannot allow PELRB to become a place for raising issues properly raised at the arbitration level.

3. We find no prima facie case to overthrow the Arbitrator's Award.

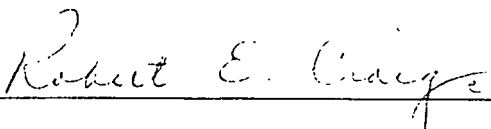
4. We do find that the City has the right to create supervisory positions it feels are best for the Department, but that it may, if it wants to, agree to curtail such parts of its rights as it thinks are proper for the best functioning

of the Department. The Arbitrator was acting within his authority in so finding in this case.

DECISION AND ORDER

We find the City of Nashua Fire Department guilty of unfair labor practices under RSA 273-A:5, I(h) for failing to abide by a final and binding arbitration award, and

We ORDER the City of Nashua Fire Department to abide by the Award of the Arbitrator in CASE No. 1139-1668-85.



ROBERT E. CRAIG, Chairman
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 16th day of October, 1986.

By unanimous vote. Chairman Robert E. Craig presiding, members Richard E. Molan, Esq., James C. Anderson and Seymour Osman present and voting. Also present, Executive Director, Evelyn C. LeBrun